

**EDUCATION AND WORKFORCE DEVELOPMENT CABINET**  
**Board of Education**  
**Department of Education**  
**(New Administrative Regulation)**

**704 KAR 3:395. Extended school services.**

RELATES TO: KRS 15 6.070, 158.070, 158.6451, 158.6453, 158.792

STATUTORY AUTHORITY: KRS 158.070(8)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.070(4) authorizes the Kentucky Board of Education to promulgate administrative regulations necessary for the efficient management, control, and operation of the schools and programs under its jurisdiction. KRS 158.070(8) requires schools to provide continuing education for students who need additional instructional time to achieve the outcomes defined in KRS 158.6451. KRS 158.070(8) requires the Kentucky Board of Education to promulgate administrative regulations establishing criteria for the allotment of grants to local school districts to provide these services and for waivers to deliver those services during the regular school day. This administrative regulation establishes requirements for extended school services.

Section 1. Definitions. (1) "At-risk students" or "At-risk" is defined in KRS 157.360(2)(a).

(2) "Average daily attendance" or "ADA" is defined by KRS 157.320(1).

(3) "Diagnostic assessment" means an assessment that is used to identify gaps in student learning in specific content areas.

(4) "Extended school services" or "ESS" means instructional and support services provided:

(a) By school districts for students who are unlikely to achieve proficiency, transition to the next level of learning successfully, or be able to meet the academic expectations in KRS 158.6451 without additional time or differentiated opportunity to learn;

(b) At times separate from the regular school day, regular school week, or the minimum school term, unless a district's request for a waiver meets the criteria established in Section 7 of this administrative regulation and has been approved by the commissioner; and

(c) As interventions included in the student's intervention plan, to ensure that the student remains in school and is on track to meet goals for postsecondary education and career after high school.

(5) "Formative assessment" is defined by KRS 158.6453(1)(e).

(6) "Individual learning plan" or "ILP" means a comprehensive framework for advising students in grades six (6) through twelve (12) to engage in coursework and activities that will best prepare them to both realize college and career success and become contributing members of their communities.

(7) "Interim assessments" is defined by KRS 158.6453(1)(f).

(8) "Student intervention plan" means a plan written to identify the specific intervention goals for a student and used to track student progress on those goals.

(9) "Summative assessment" is defined by KRS 158.6453(1)(g).

(10) "Support services" means services that provide technical, administrative, and logistical support to facilitate and enhance instruction and that:

(a) Are provided to enable the student to realize the benefits of the instructional program; and

(b) Include services, such as transportation, instructional materials or supplies, student snacks, school-based counseling, community-based mentoring, academic advising, parent training for follow through, or referrals for social, health, or financial assistance through appropriate service agencies.

Section 2. Instructional Program. (1) The major emphases of extended school services shall be to provide additional time and differentiated opportunity to learn in a program in which rigorous academic and enrichment content are aligned with individual student needs to improve the present level of performance in one (1) or more content areas. Priority for ESS services shall be placed on designing and delivering services to students at academic risk with the specific objective that students are able to:

- (a) Progress from grade to grade with their cohort;
- (b) Exit elementary school ready to meet academic expectations at the middle school level;
- (c) Exit middle school ready to meet academic expectations at the high school level; and
- (d) Exit high school ready to meet academic expectations at the postsecondary education level and in the workplace, with an emphasis on literacy and mathematics.

(2) The extended school services provided to a student shall be planned, documented, and evaluated through the student intervention plan. The instructional program for extended school services shall include:

- (a) Diagnostic assessments to determine areas of highest academic need of the individual student;
- (b) Development of goals, in consultation with classroom teachers, parents, and students, for eliminating the identified academic need, including timelines and specific measurable outcomes;
- (c) Formative and summative assessments to facilitate student progress and to determine if the student has achieved the learning goals of the student's intervention plan;
- (d) Instructional strategies that are differentiated and that do not replicate practices that have proven to be ineffective for the student in the traditional classroom;
- (e) A plan for collaboration and consistent use of interventions among the teachers supporting the student in core academic classes and those providing supports through extended school services;
- (f) Counseling and academic advising to remove barriers to achievement; and
- (g) Regular communication with the parent or guardian.

(3) The instructional program may utilize a variety of scheduling models including:

- (a) Programs operated during the regular school day as provided in Section 7 of this administrative regulation;
- (b) Extended day programs which are scheduled at any time outside of the regular school day;
- (c) Night programs;
- (d) Saturday programs;
- (e) Summer programs; or
- (f) Flexible school calendars which allow eligible students to attend school for a longer period of time than other students.

(4) The district's comprehensive school improvement plan shall include opportunities to collaborate with businesses, colleges, and community organizations to provide services and advising in off-campus locations as part of or aligned with the extended school services programs.

(5) Extended school services programs shall not supplant instructional time of the regular school program but shall extend time and provide differentiated opportunity to learn in a specific area of academic need.

(6) Certified staff, including administrators, teachers, and advisors, shall collaborate to plan, deliver, and evaluate extended school services instruction and supports as part of a student's intervention plan.

(7) Teachers providing instruction in extended school programs shall meet the same professional qualifications as teachers who are employed in the regular school program.

(8) Teachers providing instruction in extended school programs shall be provided with professional development on effective instructional strategies for meeting the needs of at-risk students and the use of formative assessment strategies to monitor progress.

(9) Certified staff shall supervise noncertified tutors.

(10) Extended school services shall be provided to eligible students who are in the first year of the primary school program through the twelfth grade. Students shall be eligible to receive these services until they graduate from the twelfth grade or reach twenty-one (21) years of age, whichever comes first.

Section 3. Student Selection. (1) Each school district shall select pupils who need additional instructional time or differentiated opportunity to learn as described in Section 2(1) of this administrative regulation. A student shall not be selected or assigned to receive extended school services for disciplinary purposes or for any kind of in-school suspension.

(2) Within its scope of authority, a local board of education may mandate the participation of eligible students in extended school services through the adoption of a written policy, which shall describe all conditions under which attendance will be required and shall provide a description of any exceptions permissible under the policy.

(3) The policy for attendance in extended school services shall include:

(a) Identification of the learning goals and benchmarks that, if achieved, indicate that the student may exit the extended school services program;

(b) The conditions under which a student's absence may be considered excused or unexcused; and

(c) The arrangements for transporting the students mandated to attend an ESS program.

(4) If requested by the Kentucky Department of Education, the local school board shall provide notice of the policy in the district's annual extended school services program report, which is submitted at the same time as the district's comprehensive school improvement plan.

(5) One (1) or more of the following shall be used to determine which students shall be eligible for and in greatest need of extended school services:

(a) Teacher recommendation;

(b) Academic performance data, including diagnostic, formative, interim, or summative assessments; or

(c) Student performance on high school, college, or workforce readiness assessments required by KRS 158.6459.

(6) Local school boards shall approve and disseminate procedures whereby students who have a greater need as determined by the eligibility criteria shall be referred and selected first to receive extended school services. These procedures shall not exclude students who have greater academic need from referral or selection for extended school services due to the inability of the parent or student to provide transportation.

(7) A local school district shall solicit input from parents and the community to identify potential barriers to participation. Identified barriers shall be addressed through engagement with community partners or through use of off-campus locations of after school, weekend, or evening ESS programs.

(8) Schools shall inform parents and guardians of extended school services including:

(a) The rationale for offering extended school services, including data about educational achievement and future earnings, opportunities for postsecondary education and training, and consequences of failure to obtain a high school diploma;

(b) A specific notification to parents or guardians of their child's eligibility to be assigned to extended school services, including the manner in which a personalized student intervention

plan and goals will be included as part of the student's individual learning plan to help ensure that the student is able to achieve the student's academic and career goals; and

(c) Written procedures for parents or guardians to request reconsideration of their child's eligibility for extended school services.

Section 4. Funding. (1) Each school district shall be eligible to receive a grant award from available funds to provide extended school services. Available funds shall be the amount of the total appropriation less two (2) percent for state administrative costs.

(2) The commissioner shall distribute the available funds as follows:

(a) One-third (1/3) of the available funds shall be distributed based on the most recent average daily attendance (ADA);

(b) One-third (1/3) of the available funds shall be distributed based on the most recent percentage of at-risk students; and

(c) One-third (1/3) of the available funds shall be distributed based on the combined reading and mathematics novice percentage (RMN) as determined by the most recent state assessment.

(3) The funds to be distributed based on ADA shall be allocated to districts as follows:

(a) Determine the percentage each district shall receive for ADA by dividing the district's ADA by the total ADA of all districts in the state.

(b) The amount the district shall receive shall equal the resulting percentage multiplied by the total funds to be distributed based on ADA.

(4) The funds to be distributed based on at-risk shall be allocated to districts as follows:

(a) Determine each district's at-risk proportion by multiplying its at-risk percentage by its ADA.

(b) The state total at-risk shall be the sum of the at-risk proportions of all districts in the state.

(c) Determine the percentage each district shall receive for at-risk by dividing the district's at-risk proportion by the state total at-risk.

(d) The amount the district shall receive shall equal the resulting percentage multiplied by the total funds to be distributed based on at-risk.

(5) The funds to be distributed based on RMN shall be allocated to districts as follows:

(a) Determine each district's RMN proportion by multiplying its RMN percentage by its ADA.

(b) The state total RMN shall be the sum of the RMN proportions of all districts in the state.

(c) Determine the percentage each district shall receive for RMN by dividing the district's RMN proportion by the state total RMN.

(d) The amount the district shall receive shall equal the resulting percentage multiplied by the total funds to be distributed based on RMN.

(6) Sum the district's portions for ADA, at-risk, and RMN to determine the district's total ESS allocation.

(7) To ensure the opportunity for all school districts to provide extended school services, no school district shall receive a grant of less than \$15,000.

(8) Grant awards shall be made to each school district upon approval by the commissioner of an application described in Section 5 of this administrative regulation. Regular grant funds shall be available for use by districts for fifteen (15) months through September 30 of the last year of the grant period. All services shall be delivered by September 30 of the last year of the grant period and all expenditures shall be paid for extended school services by December 30 of the last year of the grant period.

(9) (a) Funds received for extended school services shall be expended for instructional and support services necessary to provide an effective program.

(b) Support services shall include salaries of personnel.

(c) Transportation and staff development related to the provision of extended school services shall be considered permissible support services.

- (d) Funds for extended school services shall not be used for capital outlay or indirect costs.
  - (e) School districts shall be authorized to enter contractual agreements if needed to provide comprehensive extended school service programs.
  - (f) Funds may be expended for instructional materials and supplies if a need is demonstrated and the district does not have the supplies and materials otherwise available.
  - (g) A portion of the funds may be used for administrative costs, which shall not exceed five (5) percent of the district's allocation.
  - (h) Students shall not receive monetary compensation to attend the extended school services program.
  - (i) School districts shall maintain on file the written criteria for the selection of personnel employed in extended school services and shall ensure staffing decisions are made to best meet the needs of students.
- (10) Financial records for extended school services shall be maintained by each school district and shall be submitted to the Department of Education via the state technology system.

Section 5. Requesting Funds. (1) A request for the use of extended school services funds shall be submitted as part of the district's comprehensive improvement plan.

(2)(a) District applications for funds shall be approved by the commissioner prior to the encumbrance or expenditure of funds for extended school services by any school district, including the contracting of personnel for extended school services.

(b) Approval of programs as described in each district's comprehensive improvement plan, required program reports, and request for a waiver for alternative service delivery shall be based on this administrative regulation and KRS 158.070.

Section 6. Program Evaluation. For the purpose of program evaluation, the Kentucky Department of Education shall collect in the student information system the following data for all schools:

- (1) Number of students receiving extended school services
- (2) Content areas where services received;
- (3) Hours of service provided;
- (4) Demographic data for students receiving extended school services; and
- (5) Student improvement as a result of extended school services.

Section 7. Waiver for Alternative Service Delivery. (1) The commissioner may consider a request for a waiver to operate an extended school services program during the school day or to use an alternative delivery format. A request for a waiver shall include:

- (a) A rationale describing why a program during the school day or an alternative daytime program is needed;
- (b) A description of the instructional program that meets the criteria established in Section 2 of this administrative regulation;
- (c) A description of the student selection process that meets the criteria in Sections 2 and 3 of this administrative regulation; and
- (d) A detailed and accurate budget that includes correct financial codes, which establishes that an employee compensated with extended school services funds is delivering extended school services during the time for which the employee is being compensated with extended school services funds.

(2) For the purpose of program evaluation, the Kentucky Department of Education shall collect the following additional data from schools receiving a school day or an alternative program waiver:

- (a) Evaluation and evaluative data as approved in the waiver application; and
- (b) Data relative to the effectiveness of the extended school service program, including:
  - 1. Pre- and post-student qualitative and quantitative performance data;
  - 2. Student attendance at extended school services; and
  - 3. Promotion and graduation data.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(5).

JASON GLASS, Commissioner of Education  
LU YOUNG, Chair

APPROVED BY AGENCY: December 6, 2021

FILED WITH LRC: December 7, 2021 at 3:45 p.m.

**PUBLIC HEARING AND PUBLIC COMMENT PERIOD:** A public hearing on this proposed administrative regulation shall be held on February 22, 2022 at 10:00 a.m. in the State Board Room, 5th Floor, Kentucky Department of Education, 300 Sower Boulevard, Frankfort, Kentucky. Individuals interested in being heard at this meeting shall notify this agency in writing five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until February 28, 2022. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

**CONTACT PERSON:** Todd G. Allen, General Counsel, Kentucky Department of Education, 300 Sower Boulevard, 5th Floor, Frankfort, Kentucky 40601, phone 502-564-4474, fax 502-564-9321, email [regcomments@education.ky.gov](mailto:regcomments@education.ky.gov).

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Todd G. Allen

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation fulfills the requirements of KRS 158.070(8), to provide an extended school services (ESS) program designed to assist individual students who are having difficulty in one or more content areas.

(b) The necessity of this administrative regulation: KRS 158.070(8) requires the Kentucky Board of Education (KBE) to promulgate a regulation to address extended school opportunities and provide for the allotment of funds to school districts to provide instructional programs for pupils who are identified as needing additional time to master content.

(c) How this administrative regulation conforms to the content of the authorizing statute: KRS 158.070(8) states that schools must provide continuing education for those students who are determined to need additional time to achieve the educational goals outlined for Kentucky's schools in KRS 158.6451. KRS 158.070(8) requires the KBE to promulgate administrative regulations establishing criteria for the allotment of grants to local school districts, including criteria for a district's request for a waiver to use an alternative service delivery option. The regulation sets forth the provisions for how extended school programs must meet the educational goals set

by the General Assembly; the grant process and funding calculation; and the waiver process required by the law.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes:

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: N/A

(b) The necessity of the amendment to this administrative regulation: N/A

(c) How the amendment conforms to the content of the authorizing statute: N/A

(d) How the amendment will assist in the effective administration of the statutes: N/A

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Those affected by this regulation include local education agencies, school councils, and the Kentucky Department of Education.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No additional actions will be needed as local education agencies currently provide extended school services within their districts.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are no new costs to local education agencies.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This regulation replaces 704 KAR 3:390, the former extended school services regulation.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: No initial costs are associated with this administrative regulation beyond staff preparation and promulgation of the regulation.

(b) On a continuing basis: No additional costs are associated with this regulation beyond the annual determinations and awards to local districts.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: State general funds are appropriated by the General Assembly to local districts for extended school services.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in state funding is anticipated for the implementation of this administrative regulation.

(8) State whether this administrative regulation establishes any fees or directly or indirectly increases any fees: No direct or indirect fees are associated with the administrative regulation.

(9) TIERING: Is tiering applied? While all districts are eligible to participate in the state appropriated grant funding for extended school services, KRS 158.070(8) requires funding to be targeted to districts with struggling students and that funds should be allotted to provide additional services to students not meeting state targets/performance expectations.

## FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Local education agencies and the Kentucky Department of Education.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. The regulation may have a minimal fiscal impact on the allotment of funds to local education agencies for extended school services. The allocation formula has been updated to reflect the new assessment and accountability provisions. In part, the allocation formula relies on a calculation of a district's overall score, which the new accountability system does not calculate. The allocation formula in this regulation relies on a newly updated combined reading and mathematics novice percentage, which will align funding to local education agencies identified with the lowest performing students in the federally required math and reading assessments. The formula continues to rely on average daily attendance and the rate of free and reduced lunch eligibility (formerly referenced as economic deprivation).

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue will be generated.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue will be generated.

(c) How much will it cost to administer this program for the first year? There are no new costs to school districts anticipated with this regulation, however, as with any funding allocation formula a local education agency's attendance, rate of free and reduced lunch eligibility, and novice percentages may shift. These are the factors that drive the calculation.

(d) How much will it cost to administer this program for subsequent years? There are no new costs to school districts anticipated with this regulation. Minimal staff time at the Kentucky Department of Education will be required on an annual basis after the adoption of this administrative regulation.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): N/A

Expenditures (+/-): N/A

Other Explanation: The General Assembly appropriates funding for Extended School Services.